FILED
United States Court of Appeals
Tenth Circuit

November 21, 2011

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: TYRONE LESLIE FARRIS, Movant.	No. 11-6285 (D.C. No. 5:11-CV-00904-R) (W. D. Okla.)

ORDER

Before **LUCERO**, **TYMKOVICH**, and **HOLMES**, Circuit Judges.

Tyrone Leslie Farris comes before us once again to attempt to challenge his 1996 rape conviction. He seeks authorization to file a second or successive 28 U.S.C. § 2254 petition. We deny the request.

In 1986, Mr. Farris was convicted of first degree rape in state court in Oklahoma. In 1988, the Oklahoma Court of Criminal Appeals affirmed his conviction. Mr. Farris also sought state post-conviction relief and that request was denied.

In 1991, Mr. Farris filed his first § 2254 petition. The district court denied the petition and this court affirmed the district court's decision. *See Farris v. Kaiser*, No. 93-6122, 1993 WL 425418, at *1 (10th Cir. Oct. 19, 1993). In 1999, Mr. Farris filed a second § 2254 petition. The district court dismissed the petition as untimely and this court denied Mr. Farris's request for a certificate of

appealability. *See Farris v. Poppell*, No. 00-6034, 2000 WL 990678, at *1 (10th Cir. July 19, 2000). While that petition was pending, Mr. Farris filed two requests with this court for authorization to file a successive § 2254 petition. Both of those requests were denied.

In 2002 and 2004, Mr. Farris filed two more requests for authorization to file a successive § 2254 petition. Both of those requests were also denied. In the 2004 denial order, this court warned Mr. Farris that "[a]ny further efforts by Mr. Farris to challenge this conviction and sentence without meeting the requirements of § 2244(b)(2) may result in the imposition of sanctions." *Farris v. Ward*, No. 04-6230, Slip Op. at 3 (10th Cir. Sept. 10, 2004).

In August 2011, Mr. Farris filed another § 2254 petition. The district court dismissed the unauthorized successive § 2254 petition for lack of jurisdiction. Mr. Farris then filed the instant motion for authorization in this court.[1]

As Mr. Farris is well aware, he is not entitled to authorization unless (1) his claims implicate a new rule of constitutional law that has been made retroactively applicable by the Supreme Court to cases on collateral review or (2) he has newly discovered evidence demonstrating his actual innocence that could not have been discovered previously through the exercise of due diligence. *See* 28 U.S.C. § 2244(b)(2). Once again, Mr. Farris has failed to meet these requirements.

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[1] Mr. Farris also filed an appeal from the district court's dismissal in case no. 11-6260.

Mr. Farris seeks to raise claims of actual innocence, use of false and misleading forensic testimony in violation of *Giglio v. United States*, 405 U.S. 150 (1972), and withholding of material evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). He asserts that these claims are all based on new rules of constitutional law and newly discovered evidence.

We first note that Mr. Farris has not identified any new rules of constitutional law made retroactively applicable by the Supreme Court to cases on collateral review. Rather, he relies on cases from this court and other circuit courts–not the Supreme Court–and none of those cases created any new rules of constitutional law. *See, e.g.*, Mot. for Auth. at 7 (citing to *Williams v. Jones*, 571 F.3d 1086 (10th Cir. 2009); *Douglas v. Workman*, 560 F.3d 1156, 1174 (10th Cir. 2009); and *Ramchair v. Conway*, 601 F.3d 66 (2d Cir. 2010)).

With respect to his contention that he has newly discovered evidence, he alleges that he has recently discovered that the prosecuting attorney at his trial was not a licensed attorney and that she was involved in improper conduct in prosecuting the John Weir trial that occurred shortly after his trial. This evidence does not establish Mr. Farris's eligibility for authorization.

First, all of this evidence could have been discovered before Mr. Farris filed his first habeas petition in 1991. To support his motion for authorization, he relies on a newspaper article from November 11, 1987, which discusses the alleged misconduct in the Weir case. That article could have been discovered

before his 1991 petition through the exercise of due diligence. Likewise, his allegation that the prosecutor was unlicensed is based on responses from the Oklahoma Bar Association to letters he sent requesting that information. He could have made those requests before he filed his first § 2254 petition.

Moreover, we note that the article about the prosecutor's improper conduct in Mr. Weir's trial does not establish that the prosecutor was involved in improper conduct in Mr. Farris's trial. In addition, Mr. Farris's exhibits contain conflicting information about whether his prosecutor was a licensed attorney. One of the exhibits is a letter from Michael J. Miller of Legal Aid Services of Oklahoma in which Mr. Miller informs Mr. Farris that Pat Allen (the prosecutor) was a licensed Oklahoma attorney from 1983 to 1986, which was during the time of Mr. Farris's trial.

Finally, Mr. Farris has not presented any evidence that "would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found [him] guilty of the underlying offense," § 2244(b)(2)(B)(ii). Although he asserts that "during trial the state prosecutor intentionally used improper methods to obtain the verdict of guilt by utilization of false testimonies from the victims, contaminated the evidence . . . and presented false evidence," Mot. for. Auth. at 11, he does not actually cite to any evidence, nor is there any such evidence included in the attached exhibits. Instead, it appears as though he is relying on allegations of improper conduct from the Weir trial. *See*, *e.g.*, *id*, Ex.

A at 4. Mr. Farris has failed to show that he is actually innocent of the rape charge. *See Calderon v. Thompson*, 523 U.S. 538, 558 (1998) ("[A] federal court can consider a claim presented in a second or successive application only if the prisoner shows, among other things, that the facts underlying the claim *establish his innocence* by clear and convincing evidence." (emphasis added)).

Once again, Mr. Farris has failed to meet the requirements for authorization in § 2244(b)(2). Accordingly, we DENY his motion for authorization. This denial of authorization is not appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari. 28 U.S.C. § 2244(b)(3)(E).

Because Mr. Farris was previously warned that he would be sanctioned if he made further efforts to challenge his conviction without meeting the § 2244(b)(2) authorization requirements, we ORDER Mr. Farris to show cause as to why he should not be sanctioned for filing his most recent motion for authorization. Mr. Farris's response is due twenty days from the date of this order.

Entered for the Court,

ELISABETH A. SHUMAKER, Clerk